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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,267	12/08/2003	Wesley H. Smith	42P17112	4723
8791	7590	07/25/2006	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN				WOO, STELLA L
12400 WILSHIRE BOULEVARD				ART UNIT
SEVENTH FLOOR				PAPER NUMBER
LOS ANGELES, CA 90025-1030				2614

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/731,267	SMITH, WESLEY H.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Stella L. Woo	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 May 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3-8,10-12,14-17,19-21,23-25,27 and 28 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1, 3-8, 10-12, 14-17, 19-21, 23-25, 27-28 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-4, 8, 10, 12, 14-15, 17, 19, 21, 23, 25, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green (US 2003/02150071 A1) Green in view of Velius (US 5,594,784).

Regarding claims 1, 5, 8, 11-12, 16-17, 21, 24-25, 28, Green discloses a method comprising:

transmitting data from an electronic system over a communications medium (modem 120 communicates with server modem 160 over telephone line 140; Figure 1A; paragraphs 10-11);

receiving an indication of an incoming telephone call transmitted over the communication medium (user receives a call waiting signal when an incoming call is received from third party terminal 170; paragraphs 2 and 16); and

maintaining the data session while halting the data transmission (the server modem 160 goes on hold when the user accepts the call using telephone 110; paragraph 16).

Green differs from claims 1, 5, 8, 11-12, 16-17, 21, 24-25, 28 in that it does not teach accepting or terminating an incoming call by voice command. However, Velius teaches the desirability of allowing a call recipient to accept, refuse and terminate a call by voice command (col. 7, lines 34-45) such that it would have been obvious to an artisan of ordinary skill to incorporate such use of voice command, as taught by Velius, within the system of Green in order to provide the user with totally hand-free voice telephone communication.

Regarding claims 3, 8, 14, in Green, the data session is maintained using the v.92 modem on hold feature (paragraphs 2 and 10), and voice communication takes place via the speaker and microphone of the handset of telephone 110 (Figure 1A).

Regarding claims 4, 10, 15, 19, 23, 27, in Green, data transmission is resumed upon termination of the incoming telephone call (Figure 4, steps 420, 430, 460; paragraphs 17-22).

3. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green in view of Velius, as applied to claim 1 above, and further in view of Olafsson et al. (US 6,912,276 B1, hereinafter “Olafsson”).

The combination of Green and Velius differs from claims 6-7 in that it does not teach indicating the source of the incoming call. However, Olafsson, from the same field of endeavor, teaches the desirability of indicating caller ID information when notifying a user of an incoming call during a modem session (col. 5, lines 24-45) such that it would have been obvious to an artisan of

ordinary skill to incorporate the reception of caller ID information, as taught by Olafsson, within the combination of Green and Velius so that a user can better decide whether or not to interrupt his data session by accepting an incoming call.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1, 3-8, 10-12, 14-17, 19-21, 23-25, 27-28 have been considered but are moot in view of the new grounds of rejection. Reference US 2003/0215071 A1 (Green) qualifies as prior art under subsection of 35 U.S.C. 102(a), and therefore, is not disqualified as prior art under 35 U.S.C. 103(c).

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stella L. Woo whose telephone number is (571) 272-7512. The examiner can normally be reached on Monday-Friday, 8:00 a.m. to 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Stella L. Woo  
Primary Examiner  
Art Unit 2614